

SERVICE DATE – DECEMBER 30, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-303 (Sub-No. 25X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—  
IN LANGLADE, MENOMINEE AND SHAWANO COUNTIES, WI

Decided: December 24, 2002

By decision and notice of interim trail use or abandonment (NITU) served on January 5, 2001, the Board granted the petition for exemption filed by Wisconsin Central Ltd. (WCL) for abandonment of a 34.3-mile line of railroad known as the White Lake-Shawano Line, between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee, and Shawano Counties, WI. The exemption was subject to environmental, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period, until July 4, 2001, for the Wisconsin Department of Natural Resources (WisDNR) to negotiate an interim trail use/rail banking agreement with WCL. WCL was also required to file a notice of abandonment consummation by January 5, 2002. The decision was scheduled to become effective on February 4, 2001. Subsequently, by decision served on February 2, 2001, the January 5 decision was stayed until further order with respect to trail use/rail banking in Menominee County that was authorized. In all other respects, the January 5 decision took effect as scheduled on February 4, 2001. In a decision served on July 3, 2001, as corrected on July 10, 2001, the negotiating period under the NITU was extended until December 31, 2001, with the stay remaining in effect for the portion of the line in Menominee County. By decisions served on December 28, 2001, and February 27, 2002, the NITU negotiating period and the deadline to exercise abandonment authority were extended to May 31, 2002.<sup>1</sup> By decisions served June 7, 2002, and November 27, 2002, the NITU negotiating period was extended until May 26, 2003, for the entire line except for the portion in Menominee County (between mileposts 287 and 299.5).<sup>2</sup>

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<sup>1</sup> A petition for judicial review of the Board's decision allowing interim trail use/rail banking in Menominee County was filed in the United States Court of Appeals for the District of Columbia Circuit in Menominee Indian Tribe of Wisconsin et al. v. STB et al., No. 01-1100 (D.C. Cir. filed March 2, 2001). On May 24, 2002, that Court granted the parties' joint unopposed motion to dismiss the petition. The Board's stay is now moot.

<sup>2</sup> By letter filed on June 5, 2002, WCL informed the Board that it has consummated the abandonment of the line between milepost 287 and milepost 299.5.

By request filed on December 2, 2002, as revised by facsimile dated December 9, 2002, the Stockbridge-Munsee Community (Tribe) sought issuance of a NITU, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for the approximately 3.5-mile portion of the right-of-way approximately from milepost 303 to milepost 306.4, in Shawano County, WI. The Tribe submitted a statement indicating its willingness to assume full responsibility for management of, for indemnification of the railroad against potential liability,<sup>3</sup> and for payment of any and all taxes that may be levied against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. WCL, responding to the request, states that it is willing to negotiate with the Tribe for interim trail use.

A trail use request is accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>4</sup> and the carrier is willing to enter into negotiations. Inasmuch as WCL has not consummated the abandonment and is willing to negotiate with the Tribe for trail use over the requested portion of the right-of-way, a NITU will be issued for that portion of the right-of-way approximately from milepost 303 to milepost 306.4 in Shawano County, WI, with the trail use negotiation period running for 180 days from the service date of this decision, or until June 28, 2003. If no agreement is reached within that time period, WCL may fully abandon the line. Use of the right-of-way-for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served on January 5, 2001, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below until June 28, 2003.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case, it need only

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<sup>3</sup> The Tribe indicates that it is immune from liability.

<sup>4</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, WCL may fully abandon the line, provided the conditions imposed in this proceeding are met.

7. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary